

HOUSE BILL 3450  
By Fowlkes

AN ACT to amend Tennessee Code Annotated, Title 1;  
Title 6; Title 7; Title 11; Title 12; Title 13; Title 29;  
Title 43; Title 49; Title 54; Title 64; Title 65; Title 68  
and Title 69, relative to the power and use of  
eminent domain and property acquired by eminent  
domain.

WHEREAS, the general assembly takes notice of and reaffirms the rights guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States, and by Article I, §21 of the Constitution of the State of Tennessee, of an individual to privately own property and for such property to be free from condemnation and taking by the government, and political subdivisions thereof, through the power of eminent domain unless the taking is for a public use and accompanied by just compensation; and

WHEREAS, it is the intent of the general assembly that private property shall not be condemned or taken through the power of eminent domain by the state of Tennessee or any county, municipality, housing authority, industrial development board, any other governmental subdivision or entity or by any person authorized by the general assembly to exercise the power of eminent domain unless in accordance with such provisions of the United States Constitution, the Tennessee Constitution, and the provisions of this act; now therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 17, is amended by adding the following as a new part to be designated as part 1 and renumbering existing parts accordingly:

§29-17-101. It is the intent of the general assembly that the power of eminent domain shall be used sparingly, and that laws permitting the use of

eminent domain shall be narrowly construed so as not to enlarge by inference or inadvertently the power of eminent domain.

§29-17-102. As used in this part, unless the context otherwise requires:

(a) "Eminent domain" means the authority conferred upon the government, and those entities to whom the government delegates such authority, to condemn and take, in whole or in part, the private property of another so long as such property is taken for a legitimate public use and is accompanied by the payment of just compensation;

(b) "Public use" shall not include either private use or benefit or the indirect public benefits resulting from private economic development and private commercial enterprise, including increased tax revenue and increased employment opportunity, except as follows:

(1) The acquisition of any interest in land necessary to the function of a public or private utility, common carrier, or other entity authorized to exercise the power of eminent domain under Title 65;

(2) The acquisition of property by a housing authority or community development agency to remove blight as authorized by Title 13, Chapter 20, Part 2;

(3) Private use that is merely incidental to a public use, so long as no land is condemned or taken solely for the purpose of conveying or permitting such incidental private use; or

(4) The acquisition of property by a county, city, or town for an industrial park as authorized by Title 13, Chapter 16, Part 2.

§29-17-103. In event of a conflict between this part and any other statutes granting the authority to use the power of eminent domain by government entities, or those entities to whom the government delegates such authority, this part shall control and shall be construed to protect the private property rights of individuals and businesses such that private property may only be condemned and taken for legitimate public use as defined herein.

SECTION 2. Tennessee Code Annotated, Section 13-20-201, is amended by adding a new subsection (c) as follows:

(c) Under no circumstances shall land used predominantly in the production of agriculture, as defined by §1-3-105, be considered a blighted area.

SECTION 3. Tennessee Code Annotated, Section 13-16-207, is amended by adding a new subsection (e) as follows:

(e) A city or county may exercise the power of eminent domain for development of an industrial park only with respect to property located within the jurisdictional boundaries of the city or county; or in the case of a city, also with respect to property within an urban growth boundary as defined in §6-58-101, or in the case of a county, also with respect to property within an urban growth boundary or planned growth area as defined in §6-58-101. Before a city or county may undertake to exercise the power of eminent domain for development of an industrial park, it must obtain a certificate of public purpose and necessity as provided in subsection (a) even if no funds will be borrowed for the project, except:

(1) The requirements of subdivision (a)(1)(A)(iv) are not applicable to a certificate of public purpose and necessity obtained solely for the exercise of eminent domain authority; and

(2) A certificate of public purpose and necessity for the exercise of eminent domain, in addition to the applicable findings set forth in subdivision (a)(1)(A), shall be based on a finding that the city or county has been unable to acquire through good faith negotiations the property to be acquired by eminent domain or any alternative property that would be of comparable suitability for the project. Good faith negotiations shall be established if the city or county has made an offer to purchase the property for an amount equal to or in excess of the fair market value determined by the average of at least two (2) appraisals by independent, qualified appraisers.

SECTION 4. Tennessee Code Annotated, Title 29, Chapter 17, Part 12, is amended by adding the following as a new section:

§29-17-1203. Land acquired by eminent domain that the acquiring entity seeks to dispose of may be sold, leased or otherwise transferred to another public or quasi-public entity or to a private person, corporation or other entity provided the entity transferring the land receives at least fair market value for such land.

SECTION 5. Tennessee Code Annotated, Section 64-1-102, is amended by deleting subsection (a)(6) and substituting instead the following:

(6) May acquire by purchase, lease, or gift, property of any kind, real, personal or mixed, or any interest therein, that the board deems necessary to the exercise of its powers or functions;

SECTION 6. Tennessee Code Annotated, Section 64-1-603, is amended by deleting subdivision (3) in its entirety and substituting instead the following:

(3) Acquire by purchase, lease, gift, or in any manner other than by condemnation, property of any kind, real, personal or mixed, or any interest therein, that the board deems necessary or convenient to the exercise of its powers or functions; and

SECTION 7. Tennessee Code Annotated, Section 64-1-804, is amended by deleting subsection (a)(6) and substituting instead the following:

(6) May acquire by purchase, lease, or gift, property of any kind, real, personal or mixed, or any interest therein, that the board deems necessary to the exercise of its powers or functions;

SECTION 8. Tennessee Code Annotated, Section 64-1-805, is amended by deleting the section in its entirety.

SECTION 9. Tennessee Code Annotated, Section 64-1-204, is amended by deleting item (15) in its entirety.

SECTION 10. Tennessee Code Annotated, Section 64-1-1004, is amended by deleting item (6) and substituting instead the following:

(6) May, if funds are available, acquire by purchase, lease, or gift, property of any kind, real, or any interest therein, that the board deems necessary to the exercise of its powers or functions;

SECTION 11. Tennessee Code Annotated, Section 64-1-1005, is amended by deleting the section in its entirety.

SECTION 12. Tennessee Code Annotated, Section 64-1-1103, is amended by deleting item (14) in its entirety.

SECTION 13. Tennessee Code Annotated, Section 64-1-503, is amended by deleting item (14) and substituting instead the following:

(6) Acquire by purchase, lease, or gift, such real and personal property or any interest therein, as the board deems necessary or convenient in carrying out the purposes of this part; and

SECTION 14. Tennessee Code Annotated, Section 64-4-106, is amended by deleting the section and substituting instead the following:

Any one (1) of the participating counties, Decatur, Hardin, Perry and Wayne, upon the written recommendation of the port authority commissioners, may acquire any interest in land within the boundaries of the county by gift, purchase, or lease and may transfer such interest to the authority by sale, lease or gift. Such transfer may be authorized by resolution of the governing body of the county without submission of the question to the voters and without regard to the requirements, restrictions or other provisions contained in any other general, special or local law.

SECTION 15. Tennessee Code Annotated, Section 54-11-302, is amended by deleting the section in its entirety.

SECTION 16. Tennessee Code Annotated, Title 11, Chapter 22, Part 1, is amended by deleting the part in its entirety and substituting instead the following:

§11-22-101. The legislative body of any county is authorized to acquire by gift or purchase, any natural lakes or lands suitable for the construction of lakes, and to hold fee simple title in the name of the county.

SECTION 17. Tennessee Code Annotated, Section 11-24-102, is amended by deleting the section in its entirety and substituting instead the following.

§11-24-102. The governing body of any city or town, or county, or any school district, may dedicate and set apart for use as playgrounds, recreation centers, and other recreational purposes, any lands or buildings, or both, owned or leased by such municipality and not dedicated or devoted to another and inconsistent public use, and

such municipality may lease lands or buildings, or both, for such recreational purposes, or the governing body of any such municipality is hereby empowered to acquire lands or buildings, or both, for such purposes by gift or purchase.

SECTION 18. Tennessee Code Annotated, Section 29-17-801, is amended by deleting subsection (a)(2), as it existed on June 30, 2006, in its entirety.

SECTION 19. Tennessee Code Annotated, Section 69-6-118, is amended by deleting subsection (a)(9) and substituting instead the following:

(9) Acquire land, or any interest in land, including leasehold interests, by gift, or purchase;

SECTION 20. Tennessee Code Annotated, Title 43, Chapter 23, Part 1, is amended by deleting the part in its entirety.

SECTION 21. Tennessee Code Annotated, Title 65, Chapter 18, Part 1, is amended by deleting §§ 65-18-101 and 65-18-102 in their entirety and substituting instead the following:

§ 65-18-102. Incline railroad corporations are authorized to adopt such gauge as it may prefer.

SECTION 22. This act shall take effect July 1, 2000, the public welfare requiring it.